MICHIGAN SUPREME COURT

Office of Public Information

contact: Marcia McBrien | (313) 972–3219 or (517) 373–0129

FOR IMMEDIATE RELEASE

MICHIGAN SUPREME COURT TO HEAR FINAL SCHEDULED ORAL ARGUMENTS OF 2005-2006 TERM

LANSING, MI, April 28, 2006 – Where a woman was injured while helping her husband on the job, and she sued his employer in state circuit court, was that court authorized to determine whether the exclusive remedy of the state's worker's compensation statute applied to her? That is among the questions that the Michigan Supreme Court will consider in the final scheduled oral arguments of its 2005-2006 term.

In *Van Til v Environmental Resources Management*, a supervisor agreed to let the plaintiff, who was not an employee, assist her husband with his work; her hours were to be credited to her husband. When she sued her husband's employer for injuries she suffered during the work, the employer moved to dismiss the case, arguing that the plaintiff's exclusive remedy was under the Worker's Compensation Disability Act (WDCA) and that the matter should be addressed in a worker's compensation proceeding. The trial court and Michigan Court of Appeals both agreed that the trial court did not have jurisdiction over the case because the WDCA provided the exclusive remedy for the wife's claims. The question before the Supreme Court is whether the trial court even had the authority to decide this initial jurisdictional question.

The question of how a trial court's jurisdiction is limited by the WDCA is also at issue in *Jacobs v Technidisc, et al.*, which the Supreme Court will also hear. In *Jacobs*, the plaintiff received worker's compensation payments from his employer's worker's compensation carrier; when the plaintiff sued a third party for his injuries, the carrier intervened in the suit to seek reimbursement. That lawsuit was resolved by a consent judgment, in which the carrier agreed to continue payments to the plaintiff at a set amount. Ten years later, when the plaintiff began receiving old age social security payments, the carrier reduced its payments by that amount. When the plaintiff went to court to enforce the consent judgment, the carrier objected, arguing that the court lacked jurisdiction to set the amount of worker's compensation benefits. But the trial court disagreed, ordering the carrier to resume payments at the set amount; the Court of Appeals declined to hear the carrier's appeal, citing jurisdictional issues.

Also before the Court is *46th Circuit Trial Court v County of Crawford, et al.*, which involves a funding dispute between the circuit court and two of the three counties under its jurisdiction. A split Court of Appeals panel held in part that the circuit court could sue the counties to obtain adequate funding, and that the court's requested budget, including a new employee benefits package, was reasonable and necessary.

The remaining two cases include a class action lawsuit against a bank and a doctor's lawsuit against the hospital that he claims violated his civil rights.

Court will be held on **May 2**, starting at **9:30 a.m.** The Court will hear oral arguments in its courtroom on the sixth floor of the Michigan Hall of Justice in Lansing.

(*Please note: The summaries that follow are brief accounts of complicated cases and may not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are available on the Supreme Court's website at* http://courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. *For further details about the cases, please contact the attorneys.*)

Tuesday, May 2
Morning Session

VAN TIL v ENVIRONMENTAL RESOURCES MANAGEMENT, INC. (case no. 128283)
Attorneys for plaintiff Marcia Van Til: Thomas J. Wuori, Deborah K. Palmer/(269) 388-4800
Attorney for defendant Environmental Resources Management, Inc.: John N. Cooper, II/(269) 552-3400
Attorney for amicus curiae Workers' Compensation Law Section of the State Bar of Michigan: Martin L. Critchell/(248) 593-2450
Attorney for amicus curiae Michigan Defense Trial Counsel, Inc.: Hal O. Carroll/(248) 312-2800
Attorney for amicus curiae Michigan Trial Lawyers Association: Steven A. Hicks/(517) 394-7500
Attorney for amicus curiae Director of the Workers' Compensation Agency: Victoria A. Keating/(313) 456-0080
JACOBS v TECHNIDISC, INC., et al. (case no. 128715)
Attorney for plaintiff John R. Jacobs: Michael D. Schloff/(248) 645-5205
Attorney for defendants Technidisc, Inc., and Producer's Color Services, Inc.: Mark R. Johnson/(248) 476-6900
Attorney for intervenor Michigan Mutual Insurance Company n/k/a Amerisure Mutual Insurance Company: Gerald M. Marcinkoski/(248) 433-1414
Attorney for amicus curiae Director of the Workers' Compensation Agency: Victoria A. Keating/(313) 456-0080
Trial court (case no. 128283): Ottawa County Circuit Court
Trial court (case no. 128715): Oakland County Circuit Court
At issue: MCL 418.841(1) of the Worker's Disability Compensation Act (WDCA) states that "[a]ny dispute or controversy concerning compensation or other benefits shall be submitted to the [Bureau of Worker's Compensation] and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable." In both Jacobs and Van Til, the issue is how this statute might restrict a trial court's jurisdiction over certain claims. In *Jacobs*, Amerisure Mutual Insurance Company sought to reduce the amount of worker's compensation benefits that it was paying to the plaintiff after the plaintiff began receiving social security benefits. The trial court ruled that Amerisure was not permitted to

coordinate benefits and ordered Amerisure to resume payment at the rate set in an earlier consent judgment. In *Van Til*, the trial court ruled that the defendant was a statutory employer, and that the plaintiff's personal injury lawsuit was barred by the WDCA's exclusive remedy provision. In light of MCL 418.841(1), did the *Jacobs* and *Van Til* trial courts have jurisdiction to make these rulings?

Background: Marcia Van Til was injured while helping her husband, a janitor, strip floor wax at his place of employment, Environmental Resources Management (ERM). At her husband's request, a supervisor agreed to allow Van Til to help her husband; her hours were to be added to her husband's time card. Van Til suffered severe burn injuries from the chemicals used to strip the wax and was hospitalized. She sued ERM, claiming that it breached its duty to warn her of the dangers of working with such hazardous chemicals. ERM filed a motion for summary disposition, arguing that the trial court lacked jurisdiction over the dispute because it involved an injury to an employee. Accordingly, Van Til's exclusive remedy was worker's compensation, ERM contended. Van Til also moved for summary disposition, arguing that she was not working under a contract for hire; therefore, the trial court had jurisdiction over her negligence claim, Van Til maintained. The trial court held that Van Til was not an employee under the Worker's Compensation Disability Act (WDCA) because she was not paid for her work and was therefore a volunteer or "gratuitous worker." But the court then ruled that ERM was a statutory employer, finding that Van Til's husband acted as a contractor and arranged for her to perform a "contract of work" for ERM. As a result, the trial court concluded, the exclusive remedy of the WDCA applied; the court dismissed Van Til's lawsuit. Both parties appealed to the Court of Appeals, which held in an unpublished opinion that Van Til was an employee under MCL 418.161 and that the trial court reached the right result for the wrong reason. Van Til appeals. The Supreme Court will consider whether, under the WDCA, the trial court had jurisdiction to determine if Van Til was an employee and ERM was an employer.

John Jacobs was injured while working for Thomas Goodfellow, Inc., an employer insured by worker's compensation carrier Amerisure Mutual Insurance Company (then known as Michigan Mutual Insurance Company). Amerisure began making worker's compensation payments to Jacobs. When Jacobs sued a third party to recover for his injuries, Amerisure intervened to assert its statutory right to reimbursement. Jacobs' lawsuit was settled in 1993, when the parties signed a consent judgment. As part of that settlement, Amerisure was awarded reimbursement for worker's compensation payments that Amerisure had already made; Jacobs was awarded future worker's compensation payments at a set rate. In 2003, Jacobs turned 65 years of age and began receiving old age social security benefits; Amerisure then reduced its compensation payments by the amount of the social security benefits. Jacobs responded by filing a motion to enforce the 1993 consent judgment. Amerisure objected that the trial court lacked jurisdiction over the dispute, but the court ordered Amerisure to resume payment of worker's compensation payments at the rate stated in the consent judgment. The Court of Appeals, citing a lack of jurisdiction, declined to hear Amerisure's appeal. Amerisure appeals to the Supreme Court.

46th CIRCUIT TRIAL COURT v COUNTY OF CRAWFORD, et al. (case no. 128878)
Attorneys for plaintiffs 46th Circuit Trial Court and County of Otsego: Thomas G. Kienbaum, Noel D. Massie/(248) 645-0000
Attorney for defendants County of Crawford, Crawford County Board of Commissioners, and County of Kalkaska: Allan S. Falk/(517) 381-8449

Attorney for amicus curiae Michigan Association of Counties and Michigan Townships Association: Webb A. Smith/(517) 371-8100
Trial court: Crawford County Circuit Court
At issue: This case concerns a funding dispute between the 46th Circuit Trial Court and two of its funding units, Crawford and Kalkaska counties. Did either Crawford County or Kalkaska County enter into a contract with the circuit court to fund pension and health care benefits at a specific level? Does the circuit court have the authority to implement the new employee benefit plan over the counties' objection? What evidence supports the lower court's ruling that the circuit court could not fulfill its essential functions on the funding offered by the counties? What evidence supports the lower court's ruling that the circuit court's increased pension and health care benefits were reasonable and necessary?
Background: The 46th Circuit Trial Court, which encompasses Crawford, Kalkaska, and Otsego counties, is involved in a funding dispute with Crawford and Kalkaska counties; the dispute concerns the court's efforts to alter the court's employee benefit plan over the counties' objection. Two lawsuits, now consolidated, were filed when efforts to mediate the dispute failed, and a Kent County Circuit Court judge was assigned to handle the cases. The trial court held that the counties agreed to provide the enhanced pension and health care benefits sought by the circuit court. The trial court also concluded that the circuit court had the authority to implement the benefit package over the counties' objection. The Circuit Court had already reduced its staff to a minimum and could not function properly if required to make more cuts, the trial judge found. The Court of Appeals affirmed the trial court in a published opinion, with one judge dissenting. The Court of Appeals majority held that the counties' resolutions approving the benefits package constituted acceptance of the circuit court's offer and formed a valid contract. The Court of Appeals also held that the circuit court had the inherent authority to sue the counties to obtain adequate funding, and that the circuit court's requested budget, including the benefits package appropriation, was reasonable and necessary. The dissenting judge concluded that the counties could not enter into a contract with the circuit court to fund an obligation that the counties had a preexisting duty to fund under statute and the Michigan Constitution. The counties appeal.

COWLES v BANK WEST (case no. 127564)
Attorney for plaintiff Kristine Cowles and intervening plaintiff Karen B. Paxson: John E. Anding/(616) 454-8300
Attorney for defendant Bank West, f/k/a Bank West FSB: John J. Bursch/(616) 752-2000
Trial court: Kent County Circuit Court
At issue: The defendant bank charged a $250 document preparation fee to customers who obtained residential loans from the bank; customers who had been charged this fee sued the bank in a class action lawsuit. The original complaint was amended to add new theories of liability. The original representative of the plaintiff class was replaced by another plaintiff. Does the intervening plaintiff's new claim – which might otherwise be barred by the statute of limitations – "relate back" to the filing of the initial complaint? Is the bank's document preparation fee, which covered expenses other than document preparation, "bona fide" under applicable federal regulations?
Background: Kristine Cowles was charged a $250 document preparation fee for a residential loan she obtained from Bank West in early 1997. On July 1, 1998, Cowles sued Bank West,

alleging several state claims related to the document preparation fee. The complaint was filed on Cowles' behalf and on behalf of a class of consumers who paid the document preparation fee between 1992 and 1998. On February 16, 1999, Cowles filed a second amended complaint, claiming that Bank West's failure to disclose the document preparation fee violated the federal Truth in Lending Act (TILA). The trial court certified the class described in Cowles' second amended complaint. Bank West asked the court to dismiss Cowles' TILA claim, arguing that it was barred by the one-year statute of limitations. Accordingly, Cowles could not represent the consumer class, Bank West maintained. The trial court then allowed Karen Paxson to intervene and replace Cowles as the class representative for the TILA claim. Like Cowles, Paxson was charged a $250 document preparation fee when she obtained a residential loan from Bank West on February 9, 1998. Paxson filed a complaint in July 1999. The trial court ruled that Paxson's TILA claim was barred by the statute of limitations because it accrued more than one year before Cowles added the TILA claim in the second amended complaint. The plaintiffs appealed, arguing that, because Cowles' first complaint was filed only five months after Paxson paid the document preparation fee, Paxson's TILA claim was timely because it "related back" to the initial complaint. In a published 2-1 opinion, the Court of Appeals agreed with the plaintiffs that the trial court had erred. A majority of the panel held the second amended complaint related back to the original complaint, which tolled the statute of limitations. The majority also held that there was a question of fact as to whether the $250 fee was "bona fide and reasonable" under the applicable federal regulations, and that this issue turned on West Bank's disposition of the fee. The dissent argued against the application of the relation-back doctrine to Paxson's TILA claim. The dissent also would have held that the $250 fee was bona fide because it was for a service actually performed, and reasonable because it was similar to the prevailing cost for such services in the relevant market. The Court of Appeals remanded the case to the trial court for further proceedings. Bank West appeals.

Afternoon Session

FEYZ v MERCY MEMORIAL HOSPITAL et al (case no. 128059)
Attorney for plaintiff Bruce B. Feyz, M.D.: Jeffrey L. Herron/(734) 332-3786
Attorney for defendants Mercy Memorial Hospital, Medical Staff of Mercy Memorial Hospital, Richard Hiltz, James Miller, D.O., John Kalenkiewicz, M.D., J. Marshall Newbern, D.O., and Anthony Songco, M.D.: Susan Healy Zitterman/(313) 965-7905
Attorney for amicus curiae Michigan Health & Hospital Association: Michael J. Philbrick/(248) 740-7505
Attorney for amicus curiae Michigan Osteopathic Association: Robert L. Weyhing/(313) 965-8300
Attorney for amicus curiae Michigan State Medical Society: Joanne Geha Swanson/(313) 961-0200
Attorney for amicus curiae Michigan Civil Rights Commission and Michigan Department of Civil Rights: Ron D. Robinson/(313) 456-0200
Trial court: Monroe County Circuit Court
At issue: To what extent can a hospital's staffing decisions can be reviewed in court? Specifically, can the plaintiff physician maintain a lawsuit that alleges that the defendant hospital's staffing decisions violated a contract right or the Civil Rights Act, or amounted to a tort? How does the peer review statute, MCL 331.531, affect such claims? Does the health

professional recovery program, MCL 333.16244(1), require dismissal of the plaintiff's claims challenging the defendant's referral of the plaintiff for psychiatric evaluation?

Background: This lawsuit, which was filed by plaintiff Dr. Bruce Feyz against the defendants, Mercy Memorial Hospital and several of its administrators, is the culmination of a long-standing dispute between the two groups. The dispute began when Dr. Feyz issued standing orders directing the nursing staff to gather specific information from incoming patients about their home prescription drug use. The hospital did not approve the standing orders, and instructed the nurses not to follow them. Dr. Feyz objected. Dr. Feyz also took issue with a hospital policy requiring physicians to sign transcriptions of their verbal orders that also contained information provided by the nursing staff. When the parties could not resolve their disagreements, the hospital staff initiated disciplinary proceedings. As a result of these proceedings, Dr. Feyz was referred for a psychological examination and placed on probation for a period of time in 1998 and again in 2000. In his lawsuit, Dr. Feyz alleged that the defendants' actions violated several civil rights laws, and breached various contract and tort duties owed to him. The defendants moved for summary disposition, claiming immunity under the peer review statute, MCL 331.531. They also invoked the nonreviewability doctrine, arguing that hospital staffing decisions are not subject to judicial review. The trial court granted summary disposition in the defendants' favor, dismissing Dr. Feyz's claims. But the Court of Appeals, in a split published decision, reversed in part, reinstated many of Dr. Feyz's claims, and remanded the case to the trial court for further proceedings. The Court of Appeals held that the immunity granted by the peer review statute, MCL 331.531, does not extend to violations of civil rights acts. The court further held that the nonreviewability doctrine only shields private hospitals to the same extent that employment decisions of other private employers are shielded from review, meaning that private hospitals are subject to the same potential civil liability as any other private corporation that breaches a contract or commits a tort. The defendants appeal.

-- MSC --